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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,276	05/28/2008	Yanjing Wang	79411.1500	3274

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EXAMINER
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DEGUIRE, KATHERINE E

ART UNIT	PAPER NUMBER
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1781

NOTIFICATION DATE	DELIVERY MODE
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05/12/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@bakerlaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/568,276	<b>Applicant(s)</b> WANG ET AL.	
	<b>Examiner</b> Katherine DeGuire	<b>Art Unit</b> 1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

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## **DETAILED ACTION**

### ***Claim Objections***

Claims 4,15, and 16 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claims 4,15, and 16 are all dependent off of claim 1 and only recite the limitation: *"The confectionary product as claimed in claim 1, wherein said distinct and discrete regions respectively have different crystal grain sizes, and crystal grain sizes off each two adjacent regions are distinctive."*

These claims fail to further limit claim 1 because claim 1 contains this exact limitation, word for word.

Claims 2 and 3 are objected to because of the following informalities:

"Xylito" should be written as "Xylitol." Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 1 recites the limitation “wherein said distinct and discrete regions respectively have different crystal grain sizes.” It is unclear whether each distinct region has a crystal grain size or range that is different as a whole from the crystal grain size of the other region or if the grain sizes within each region are different among themselves. It is further unclear if both interpretations could also be applied. Furthermore, it is unclear what is considered a “crystal grain size” since it is difficult for an entire region to have an identical size. Thus, it is unclear if the applicant intends the “grain size” to be a range of values.

Claim 5 recites the limitation “contains less than 2% by weight of physiologically acceptable flavors and physiologically acceptable colorants.” This limitation is unclear because it has several plausible interpretations and does not properly limit the metes and bounds of the claims. The interpretations are as follows.

The composition must contain:

1) -less than 2% by weight flavors

-colorants

2) –less than 2% by weight flavors

-less than 2% colorants

3) flavors and colorants but the total percentage of both ingredients is less than 2%

Interpretation 1 greatly conflicts with interpretations 2 and 3. In interpretation 1, the composition must contain colorants and in interpretations 2 and 3 colorants may be excluded entirely and still meet the limitation. Due to these conflicting interpretations, the claim is indefinite.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1,2,4,5-15,17,19,21 are rejected under 35 U.S.C. 102(b) as being anticipated by Ribadeay-Dumas (US 5,900,261).**

Regarding claims 1, 2,4,6-15,17,19, and 21, Ribadeay-Dumas teaches a sugar-free crystalline coating for a confection. Ribadeay-Dumas teaches that the composition can comprise continuous coatings that enclose a central confectionary or medicinal core (column 6, line 10-23). Ribadeay-Dumas also teaches that the confection can be double coated, creating two distinct regions or stacked layers with different sweetener bases. Ribadeay-Dumas states that "the aim(of the invention) is to start with a syrup containing a pure polyol such as xylitol, malitol, or lactitol and then to continue it and finish it using another syrup of polyol which is also pure but different in nature from the first polyol, such as isomalt." (column 3, line 57-65). The double coating creates two distinct layers with different sweetener bases, the first layer crystallizing before the addition of the second layer (column 7, line 40-52). The discrete and distinct regions would inherently provide different taste profiles and mouth feelings.

Ribadeay-Dumas teaches that the double coatings or other complex coatings are composed of several layers of "different nature or texture." (column 6, line 55-59). Ribadeay-Dumas also teaches in example II that some regions of the coating contain two populations of

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crystals of different sizes. Some crystals are more elongated and parrallelepipedal and while others are more compact in shape and less elongated.

Regarding claim 5, Ribadeay-Dumas teaches that the center confection to be coated may contain plant granules, seeds, dried fruit, and grains (column 6, line 10-22). However, Ribadeay-Dumas teaches that these ingredients are not required and may be excluded. If no plant materials are included, then the confection comprises less than 20% of plant extracts. Ribadeay-Dumas does not specifically teach that physiologically acceptable flavors and physiologically acceptable colorants are required for the invention. Thus, they can be excluded for a concentration of less than 2%. Ribadeay-Dumas meets the limitation of claim 5 under interpretations 2 and 3 of the 112 rejection above.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 3,16,18,20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ribadeay-Dumas.**

Regarding claim 3, it would have been obvious for one of ordinary skill in the art to chose xylitol as the first layer and isomalt as the second layer. Ribadeay-Dumas teaches double

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coated embodiment in which the first layer is chosen from a finite number of options of xylitol, malitol, or lactitol and that the second layer is isomalt. Any one of these limited number of embodiments are considered valid options according to the reference.

Regarding claim 16, Ribadeay-Dumas teaches that the confectionary product has two distinct regions with crystal grains of different sizes (example II). It would have been obvious to vary the crystal sizes of each region when choosing xylitol for the first region and isomalt for the second.

Regarding claim 18, Ribadeay-Dumas teaches that the center confection to be coated may contain plant granules, seeds, dried fruit, and grains. However, Ribadeay-Dumas teaches that these ingredients are not required and may be excluded. If no plant materials are included, then the confection comprises less than 20% of plant extracts. Ribadeay-Dumas does not specifically teach that physiologically acceptable flavors and physiologically acceptable sweeteners are required for the invention. Thus, they can be excluded for a concentration of less than 2%. Ribadeay-Dumas meets the limitation of claim 5 under interpretations 2 and 3 of the 112 rejection above.

Regarding claims 20 and 22, Ribadeay-Dumas teaches that the confection can be double coated, creating two distinct regions or stacked layers. Ribadeay-Dumas also teaches that the composition can comprise continuous coatings that enclose a central confectionary or medicinal core (column 6, line 10-23)

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine DeGuire whose telephone number is (571)270-1136. The examiner can normally be reached on Monday through Friday 9-5:30 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Katherine DeGuire/  
Examiner, Art Unit 1781

/Keith D. Hendricks/  
Supervisory Patent Examiner, Art Unit 1781